THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

-

WRIT PETITION NO : 11004 of 1996

25-01-2006

Between:

Smt.Saleema G.Rattansey, w/o Anand Bala,
17 West Marredpally, Secunderbad.

..... PETITIONER

AND

1 The Hyderabad Urban Development Authority, rep by its

Vice Chairman, 1-8-323, Paigah Plaza ,
Police Lines , Secundrabad.
2 The Government of Andhra Pradesh rep by Secretary,
Municipal Administration and Urban Development

secretariat , Hyderabad.

.....RESPONDENTS

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

-

WRIT PETITION NO : 11004 of 1996

O R D E R:

The case of the petitioner is that she along with husband is the owner of Ac.6.00 in S.No. 219 of Yapral Village, Malkajgiri Mandal, Ranga Reddy District and when she made an application to the HUDA (1st respondent) under Section

14 of the A.P. Urban Areas (Development) Act 1975 (for short 'the Act') for permission to develop the said land, she was asked to pay Rs.24,010/- on or before 30-06-1995 as development charges under Section 27 and 29 of the Act along with necessary documents, and on her application, time for payment was initially extended till 31-12-1995 and subsequently till 24-12-1996 and though she paid the amount of Rs.24,010/- demanded by the 1st respondent by way of banker cheque on 18-4-1996, well within the time extended, 1st respondent, through the letter dated 12-3-1996 asked her to pay Rs.2,40,019/- and Rs.5000/- towards development charges and miscellaneous charges respectively on or before 22-04-1996 in view of the issuance of G.O.Ms.No.51 dated 5-2-1996 for which she sent a reply, and in spite of that reply informing the 1st respondent that the said G.O.Ms.No.51 does not have retrospective operation and since she made the application well before the issuance of the said G.O., she need pay the rates that prevailing earlier only, respondents are not considering her application and so she filed this petition to declare that the demand for payment of development charges by the 1st respondent in pursuance of G.O.Ms.No.51 M.A. dated 5-2-1996, for consideration of her application, is illegal and without jurisdiction.

2. The case of the respondents, as disclosed from the counter affidavit filed by the Secretary of the 1st respondent, is that after the petitioner was directed to pay Rs.24,010/- towards development charges along with documents referred to therein she filed an application seeking extension of time for payment till the end of December, 1995 on the ground that CCCA No.211 of 1992 is pending in this Court between her vendor and the Mandal Educational Officer, and subsequently through her letter dated
25-12-1995 she sought further extension till 22-04-1996 for payment of the development charges, and accordingly time was extended. But in the meanwhile rates of development charges were enhanced through G.O.Ms.No.51, dated 5-2-1996 and since the application of the petitioner without payment of development charges cannot be considered as a valid application in view of Section 14(2) of the Act read with the A.P. Urban Development Authority (Hyderabad) Rules, 1975, (for short 'the Rules') she was directed to pay Rs.2,40,019/- towards development charges for consideration of her application.

3. The main contention of Sri Soma Konda Reddy, learned counsel for the petitioner is that in view of ratio in **G.Pochaiah and another Vs. Govt. of A.P.Municipal Administration and Urban Development Department and another ()** the date of application only is relevant to decide the quantum of development charges payable and since G.O.Ms.No.51 M.A. dated 5-2-1996 came into force long subsequent to the date of submission of the application of the petitioner and since petitioner was granted extension of time for payment of development charges till 22-4-1996, the coming into force of G.O.Ms.No.51 on 5-2-1996 has no relevance for deciding the development charges to be paid by the petitioner.

4. The contention of Sri Niranjan Reddy, learned Standing Counsel for the 1st respondent is that in view of Section 14 of the Act read with Rule 15(1) of the Rules, application of the petitioner, not accompanied by the receipt showing payment of development charges, would not be a valid application and so merely because petitioner was granted time till 22.4.1996 she cannot take shelter under the said order granting extension of time and so she has to pay the development charges as per G.O.Ms.No.51 dated 5-2-1996, for the 1st respondent considering her application.

5. In my considered view, ratio in G.Pochaiah's case (1 supra) has no application to the facts of this case, because the petitioner in that case, after she made an application on 10-06-1993 for according charge of land user was asked to pay Rs.2,65,046 towards development charges, green belt charges and processing charges, had complied with that demand on 24-11-1995 i.e. well before the coming into force of G.O.Ms.No.51. Thereafter through proceedings dated 7-5-1996 she was asked to pay an amount of Rs.7,35,138/- towards difference in development charges in view of issuance of G.O.Ms.No.51. In those circumstances, taking into consideration Section 14 of the Act and Rule 15(1) of the Rules it was held that the date of application only is relevant for arriving at the development charges payable and inasmuch as a valid application was subsisting even by the date of coming into force of G.O.Ms.No.51, she cannot, by invoking the said G.O., be asked to pay charges as enhanced in the said G.O.

6. Since Rule 15 of the Rules clearly lays down that no application for

permission shall be deemed to be valid, unless the person giving application pays in advance the fee determined by the authority from time to time for grant of permission it is clear that for an application to be a valid application payment of the charges demanded is the *sine qua non.* So any application, when the money determined by the 1st respondent is not paid would be *non est* in the eye of law. Therefore, the application made by the petitioner on 7-3-1995 was not a 'valid application' for its being considered by the 1st respondent by the date of coming into force of G.O.Ms.No.51 because she did not pay Rs.24,010/- earlier demand by 5.2.1996 i.e. the date of coming into force of the said G.O.Ms.No.51. Therefore, her application can be considered only after she pays the charges as per G.O.Ms.No.51. Had the petitioner made the payment of Rs.24,010/- as demanded before 5-2-1996 and had the 1st respondent asked the petitioner to pay enhanced rates as per G.O.Ms.No.51 petitioner can take shelter under the G.Pochaiah case (1supra) and contend that she need not pay the enhanced rates under G.O.Ms.No.51. In view thereof, I find no merits in this petition and hence the petition is dismissed. No costs.

_____

25-01-2005

Mjl/*

L.R. copy to be marked.